

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Nina Shandler

Date application filed with the Town Clerk: July 28, 2005

Nature of request: A Special Permit for a supplemental apartment under Section 5.011 of the Zoning Bylaw

Address: 47 Summer Street (Map 5A, Parcel 75, R-N Zoning District)

Legal notice: Published on August 10 & 17, 2005 in the Daily Hampshire Gazette and sent to abutters on August 10, 2005.

Board members: Zina Tillona, Susan Pynchon and Joan Golowich

Submissions: The petitioner submitted the following with the application:

- A site plan showing the house on the lot and the existing parking
- A floor plan of the proposed supplemental apartment
- A management plan for the proposed apartment

Town staff submitted:

- A memo from the zoning staff assistant outlining the four provisions of Section 5.011 of the Bylaw for supplemental apartments and the dimensional requirements, dated August 24, 2005.
- A memo from the Fire Department stating that the proposed apartment would not change emergency vehicle access

Site Visit: August 30, 2005

The Board met with the applicant at her home and observed the following:

- The three parking places next to the driveway, plus the attached two-car garage.
- The two means of egress for the proposed apartment
- The location of the proposed apartment on the second and third floors of the applicant's house
- The large, wooded lot, with a wooded conservation area directly east of the property

Public Hearing: August 25, 2005, continued to September 1, 2005

Although the hearing had been advertised for August 25th, one ZBA member could not be

present for the scheduled date. The hearing was continued to September 1st as a result.

Ms. Shandler represented herself at the hearing. She stated that she wants a supplemental apartment in their home. This space, 620 square feet, was previously used by the family. Now there are only two people and two dogs left in the house, and they would like to rent the extra space to no more than two tenants. The house will be owner-occupied, and no changes will be made to the exterior of the house.

Board member Joan Golowich asked about the submitted Management Plan stating that the number of bedrooms in the house will not increase with the proposal. Referring to the submitted diagram of the proposed apartment, the applicant said that the family has re-arranged the rooms of the house; they are converting two second-floor bedrooms into the kitchen and sitting room of the proposed apartment, and converting smaller rooms on the first-floor into bedrooms. The end result is that the total number of bedrooms in the house will remain the same at three bedrooms.

Bonnie Weeks, Building Commissioner, stated that there is a problem having the second floor means of egress for the proposed apartment coming off the bedroom. The building code does not allow it. The exits must be from shared spaces that cannot be locked, such as the living room or kitchen. Also the front entranceway must have fire separation material according to building code.

Michael Shandler, the applicant's husband, said that the second floor bedroom is the largest room and has a good exit right into the backyard. They would like to keep the exit in that room.

ZBA Chair Zina Tillona stated that the applicants need to talk to the Building Commissioner about their plans. The Zoning Board of Appeals determines only whether a supplemental apartment is permissible. If a Special Permit is granted, the apartment must be built according to state fire, health and safety codes.

Ms. Tillona also stated that the petitioner needs to determine where the second means of egress will be located for the apartment, and re-submit the plans to the Board at a later date.

Ms. Shandler said that the first floor has four separate entrances to the house, and the apartment will have two separate entrances. They will talk to the Building Commissioner about re-arranging the bedroom and living space for the supplemental apartment.

No members of the public spoke at the hearing.

Susan Pynchon moved to close the evidentiary part of the hearing. Zina Tillona seconded the motion, and the vote was unanimous to close the hearing.

Public Meeting:

The Board noted that the petition meets all the conditions of Section 5.011 of the Zoning Bylaw for supplemental apartments. That is:

1. The proposed apartment is 620 square feet, less than the 800 square feet upper limit (Section 5.01110)
2. The dwelling will not be used simultaneously for boarders, roomers or a bed & breakfast (Section 5.0111)
3. One of the dwelling units will be occupied by the owner (Section 5.01112)
4. The supplemental apartment will be occupied by not more than two persons, and the Bylaw limits the number to three persons (Section 5.01113)

In addition, the Board noted the ample size of the applicant's property, the conservation land abutting the property, and the proximity to Puffer's Pond for recreation activities.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 & 10.381 – The proposal is suitably located in the neighborhood in which it is proposed and compatible with existing uses because there are other multi-family dwellings in the neighborhood as well as an apartment complex.

10.382, 10.384 & 10.385 – The proposal would not constitute a nuisance due to pollution, noise, lights or offensive structures, and adequate facilities will be provided since the total number of people on site will not increase beyond four, and the house can easily accommodate a supplemental apartment without any external changes.

10.383, 10.386 & 10.387 – The proposal would not be an inconvenience to abutters or pedestrians because the property is not changing at all. Convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets will be unchanged. There may be one extra car on site, and previously provided spaces for five cars have existed. The driveway is wide, with good visibility.

10.388 – The proposal ensures adequate space for off-street loading and unloading of vehicles and goods, since the driveway is wide, parking is generous, and there are several entrances to the house.

10.389 – The proposal provides adequate methods of disposal of waste, since the property is connected to Town water and sewer, the management plan states that the owners will provide for trash/recycling pickup on a weekly basis.

10.391 – The proposal protects important natural or scenic features in that no changes will be made to the property, which has a large wooded area on it adjacent to a wooded conservation area.

10.392 & 10.393 – The proposal provides adequate landscaping and protection of adjacent properties, because the large lot will not be altered from its naturally screened and wooded state.

10.396 – The proposal provides screening for storage areas since the management plan states that tenants may store large items in the applicant's house.

10.398 – The proposal is in harmony with the general purpose and intent of the Bylaw

because it promotes a suitable residential space for extra inhabitants of the Town while protecting the essential characteristics of existing residences in the area. It also provides for a safe and convenient extra residence in a neighborhood with other rental units close to the University.

Zoning Board Decision:

Susan Pynchon moved to APPROVE the application, with conditions. Zina Tillona seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to APPROVE a Special Permit to Nina Shandler for a supplemental apartment under Section 5.011 of the Zoning Bylaw on the premises at 47 Summer Street (Map 5A/Parcel 75, R-N Zone), with conditions.

ZINA TILLONA

JOAN GOLOWICH

SUSAN PYNCHON

FILED THIS _____ day of _____, 2005 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2005.
NOTICE OF DECISION mailed this _____ day of _____, 2005
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2005,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to Nina Shandler for a supplemental apartment under Section 5.011 of the Zoning Bylaw on the premises at 47 Summer Street (Map 5A/Parcel 75, R-N Zone), subject to the following conditions:

1. Final plans for the supplemental apartment shall be submitted to the Board for review and approval at a public meeting prior to issuance of a building permit.
2. The house shall be owner-occupied.
3. The Management Plan, approved by the Board on September 1, 2005 shall be followed as described in the plan.
4. No more than two (2) persons shall reside in the supplemental apartment.
5. Parking shall be as shown on the site plan approved by the Board on September 1, 2005.
6. All means of egress shall have exterior lighting, downward pointing,

ZINA TILLONA, Chair
Amherst Zoning Board of Appeals

DATE